ASSEMBLY BILL No. 632

Introduced by Assembly Member Katz

February 21, 1995

An act to amend Sections 12025 and 12031 of, and to repeal Section 12031.5 of, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 632, as introduced, Katz. Firearms.

(1) Under existing law, a person who carries a concealed firearm on his or her person, as specified, or within any vehicle, as specified, is guilty of carrying a concealed firearm punishable as a misdemeanor or a felony.

This bill would provide that the offense of carrying a concealed firearm is punishable by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, unless the person previously has been convicted of any felony or of any crime made punishable under the Dangerous Weapons' Control Law, in which case the offense would be punishable as a felony. By increasing the punishment of an existing crime, this bill would create a state-mandated local program.

(2) Existing law provides that every person who carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street, as specified, is guilty of a misdemeanor.

This bill would provide that a person who violates this provision is guilty of carrying a loaded firearm. The bill would provide that if certain circumstances exist, the offense is

carrying a loaded firearm of the 1st degree and is punishable by imprisonment in a county jail not to exceed one year or in the state prison, thereby imposing a state-mandated local program by increasing the punishment of an existing crime. Any other violation of this provision is carrying a loaded firearm of the 2nd degree and is punishable as a misdemeanor.

(3) Under existing law, every person who has been convicted previously of carrying a loaded firearm in violation of (2) and who carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street, as specified, is guilty of a public offense punishable by imprisonment in the state prison or in a county jail not exceeding one year. Existing law also specifies that, notwithstanding this provision, any person who has been convicted previously of violating (2) and who violates this provision and is actively engaged in, or going to or from, a recreational sport, including competitive shooting that may require the use of a firearm is guilty of a misdemeanor.

This bill would repeal and recast these provisions for purposes of (2) above.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the Anti-Street Crimes Act of 1995.

SEC. 2. Section 12025 of the Penal Code is amended to read:

12025. (a) A person is guilty of carrying a concealed firearm when he or she does any of the following:

(1) Carries concealed within any vehicle which is under his or her control or direction any pistol, revolver,

or other firearm capable of being concealed upon the person.

(2) Carries concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person.

(b) Carrying a concealed firearm in violation of this section is punishable, as follows:

(1) Where the person previously has been convicted of any felony, or of any crime made punishable by this chapter, as a felony.

(2) ~~Where the person has been convicted of a crime against the person or property, or of a narcotics or dangerous drug violation~~ *Except as provided in paragraph (1)*, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

~~(3) In all cases other than those specified in paragraphs (1) and (2), as a misdemeanor, punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.~~

(c) (1) Every person convicted under this section who previously has been convicted of a misdemeanor offense enumerated in Section 12001.6 shall be punished by imprisonment in a county jail for at least three months and not exceeding six months, or, if granted probation, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for at least three months.

(2) Every person convicted under this section who has previously been convicted of any felony, or of any crime made punishable by this chapter, if probation is granted, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(d) The court shall apply the three-month minimum sentence as specified in subdivision (c), except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or

execution of sentence without the minimum imprisonment required in subdivision (c) or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivision (c), in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(e) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

SEC. 3. Section 12031 of the Penal Code is amended to read:

12031. (a) (1) ~~Every person who~~ *A person is guilty of carrying a loaded firearm when he or she* carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory ~~is guilty of a misdemeanor~~.

(2) *Carrying a loaded firearm is of the first degree when any of the following circumstances exist:*

(A) The person previously has been convicted of violating this section, except as provided in paragraph (4).

(B) The firearm is a pistol, revolver, or other firearm capable of being concealed upon the person and the person is not listed as the owner of that pistol, revolver, or other firearm capable of being concealed upon the person or as the person being loaned that pistol, revolver, or other firearm capable of being concealed upon the person on the records maintained by the Department of Justice pursuant to Section 11106.

(C) The firearm is not a pistol, revolver, or other firearm capable of being concealed upon the person and either of the following circumstances apply:

(i) The person is within a prohibited class of persons described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(ii) The person previously has been convicted of any felony, or of any crime made punishable by this chapter, except as provided in paragraph (4).

(3) Any violation of this section other than that enumerated in paragraph (2) is carrying a loaded firearm of the second degree.

(4) Notwithstanding paragraphs (2), (3), and (5), any person who violates this section and is actively engaged in, or going to or from, a recreational, sport, including, but not limited to, competitive shooting, or hunting activity which may require the use of a firearm is guilty of a misdemeanor on the first or any subsequent violation. As used in this paragraph, 'going to or from' includes a reasonable diversion from the direct route of travel.

(5) Carrying a loaded firearm is punishable as follows:

(A) Carrying a loaded firearm in the first degree is punishable by imprisonment in a county jail not to exceed one year or in the state prison.

(B) Carrying a loaded firearm in the second degree is punishable as a misdemeanor.

(6) Nothing in this section shall preclude prosecution under Sections 12021 and 12021.1 of this code, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a greater penalty than this section.

(7) Notwithstanding paragraphs (2) and (3) of subdivision (a) of Section 836, a peace officer may make an arrest without a warrant:

(A) When the person arrested has violated this section, although not in the officer's presence.

(B) Whenever the officer has reasonable cause to believe that the person to be arrested has violated this section, whether or not this section has, in fact, been violated.

~~(3)~~

(8) (A) Every person convicted under this section who has previously been convicted of an offense enumerated in Section 12001.6, or of any crime made punishable under this chapter, shall serve a term of at least three months in a county jail, or, if granted probation, or if the execution or imposition of sentence is

suspended, it shall be a condition thereof that he or she be imprisoned for a period of at least three months.

(B) The court shall apply the three-month minimum sentence except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in this subdivision, in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(9) A violation of this section which is punished by imprisonment in a county jail not exceeding one year shall not constitute a conviction of a crime punishable by imprisonment for a term exceeding one year for the purposes of determining federal firearms eligibility under Section 922(g)(1) of Title 18 of the United States Code.

(b) Subdivision (a) shall not apply to any of the following:

(1) Peace officers listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, other honorably retired peace officers who during the course and scope of their employment as peace officers were authorized to, and did, carry firearms, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any of those officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting that officer. Any peace officer described in this paragraph who has been honorably retired shall be issued an identification certificate by the law enforcement agency from which the officer has retired. The issuing agency may charge a fee necessary to cover any reasonable expenses incurred

by the agency in issuing certificates pursuant to this paragraph and paragraph (3).

Any officer, except an officer listed in Section 830.1, 830.2, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a loaded firearm.

No endorsement or renewal endorsement issued pursuant to paragraph (2) shall be effective unless it is in the format set forth in subparagraph (D) of paragraph (1) of subdivision (a) of Section 12027, except that any peace officer listed in subdivision (f) of Section 830.2 or in subdivision (c) of Section 830.5, who is retired between January 2, 1981, and on or before December 31, 1988, and who is authorized to carry a loaded firearm pursuant to this section, shall not be required to have an endorsement in the format set forth in subparagraph (D) of paragraph (1) of subdivision (a) of Section 12027 until the time of the issuance, on or after January 1, 1989, of a renewal endorsement pursuant to paragraph (2).

(2) A retired peace officer, except an officer listed in Section 830.1, 830.2, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall petition the issuing agency for renewal of his or her privilege to carry a loaded firearm every five years. An honorably retired peace officer listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a loaded firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke, for good cause, the retired officer's privilege to carry a loaded firearm. A peace officer who is listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who is retired prior to January 1, 1981, shall have his or her privilege to carry a loaded firearm denied or revoked by having the agency from which the officer retired stamp on the officer's identification certificate ''No CCW privilege.''

(3) An honorably retired peace officer who is listed in subdivision (c) of Section 830.5 and authorized to carry loaded firearms by this subdivision shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually. The individual retired peace officer shall be responsible for maintaining his or her eligibility to carry a loaded firearm. The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired.

(4) Members of the military forces of this state or of the United States engaged in the performance of their duties.

(5) Persons who are using target ranges for the purpose of practice shooting with a firearm or who are members of shooting clubs while hunting on the premises of those clubs.

(6) The carrying of pistols, revolvers, or other firearms capable of being concealed upon the person by persons who are authorized to carry those weapons pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.

(7) Armored vehicle guards, as defined in Section 7521 of the Business and Professions Code, (A) if hired prior to January 1, 1977; or (B) if hired on or after that date, if they have received a firearms qualification card from the Department of Consumer Affairs, in each case while acting within the course and scope of their employment.

(8) Upon approval of the sheriff of the county in which they reside, honorably retired federal officers or agents of federal law enforcement agencies, including, but not limited to, the Federal Bureau of Investigation, the Secret Service, the United States Customs Service, the Federal Bureau of Alcohol, Tobacco, and Firearms, the Federal Bureau of Narcotics, the Drug Enforcement Administration, the United States Border Patrol, and officers or agents of the Internal Revenue Service who were authorized to carry weapons while on duty, who were assigned to duty within the state for a period of not

less than one year, or who retired from active service in the state.

Retired federal officers or agents shall provide the sheriff with certification from the agency from which they retired certifying their service in the state, the nature of their retirement, and indicating the agency's concurrence that the retired federal officer or agent should be accorded the privilege of carrying a loaded firearm.

Upon approval, the sheriff shall issue a permit to the retired federal officer or agent indicating that he or she may carry a loaded firearm in accordance with this paragraph. The permit shall be valid for a period not exceeding five years, shall be carried by the retiree while carrying a loaded firearm, and may be revoked for good cause.

The sheriff of the county in which the retired federal officer or agent resides may require recertification prior to a permit renewal, and may suspend the privilege for cause. The sheriff may charge a fee necessary to cover any reasonable expenses incurred by the county.

(c) Subdivision (a) shall not apply to any of the following who have completed a regular course in firearms training approved by the Commission on Peace Officer Standards and Training:

(1) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also, under the express terms of the charter, (A) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (B) are not less than 18 years of age or more than 40 years of age, (C) possess physical qualifications prescribed by the commission, and (D) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(2) The carrying of weapons by animal control officers or zookeepers, regularly compensated as such by a governmental agency when acting in the course and scope of their employment and when designated by a

local ordinance or, if the governmental agency is not authorized to act by ordinance, by a resolution, either individually or by class, to carry the weapons, or by persons who are authorized to carry the weapons pursuant to Section 607f of the Civil Code, while actually engaged in the performance of their duties pursuant to that section.

(3) Harbor police officers designated pursuant to Section 663.5 of the Harbors and Navigation Code.

(d) Subdivision (a) shall not apply to any of the following who have been issued a certificate pursuant to Section 12033. The certificate shall not be required of any person who is a peace officer, who has completed all training required by law for the exercise of his or her power as a peace officer, and who is employed while not on duty as a peace officer.

(1) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(2) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority (A) if hired prior to January 1, 1977; or (B) if hired on or after January 1, 1977, if they have completed a course in the carrying and use of firearms which meets the standards prescribed by the Department of Consumer Affairs.

(3) Private investigators and private patrol operators who are licensed pursuant to Chapter 11.5 (commencing with Section 7512) of, and alarm company operators who are licensed pursuant to Chapter 11.6 (commencing with Section 7590) of, Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(4) Uniformed security guards or night watch persons employed by any public agency, while acting within the scope and course of their employment.

(5) Uniformed security guards, regularly employed and compensated in that capacity by persons engaged in

any lawful business, and uniformed alarm agents employed by an alarm company operator, while actually engaged in protecting and preserving the property of their employers or on duty or en route to or from their residences or their places of employment, and security guards and alarm agents en route to or from their residences or employer-required range training. Nothing in this paragraph shall be construed to prohibit cities and counties from enacting ordinances requiring alarm agents to register their names.

(6) Uniformed employees of private patrol operators and private investigators licensed pursuant to Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(e) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section.

(f) As used in this section, ‘‘prohibited area’’ means any place where it is unlawful to discharge a weapon.

(g) A firearm shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell, consisting of a case which holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(h) Nothing in this section shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by that person for lawful purposes connected

with that business, from having a loaded firearm within the person's place of business, or any person in lawful possession of private property from having a loaded firearm on that property.

(i) Nothing in this section shall prevent any person from carrying a loaded firearm in an area within an incorporated city while engaged in hunting, provided that the hunting at that place and time is not prohibited by the city council.

(j) (1) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or herself or of another is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property. As used in this subdivision, ''immediate'' means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

(2) A violation of this section is justifiable when a person who possesses a firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This paragraph may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to defendants charged with violating Section 12025 or of committing other similar offenses.

Upon trial for violating this section, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(k) Nothing in this section is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

(*l*) Nothing in this section shall prevent any person from having a loaded weapon, if it is otherwise lawful, at his or her place of residence, including any temporary residence or campsite.

SEC. 4. Section 12031.5 of the Penal Code is repealed.

~~12031.5. (a) Except as provided in subdivision (b), every person who has been convicted previously of violating Section 12031 and who carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in a prohibited area of unincorporated territory is guilty of a public offense, punishable by imprisonment in the state prison, or in a county jail not exceeding one year.~~

~~(b) Notwithstanding subdivision (a), any person who has been convicted previously of violating Section 12031 and who violates subdivision (a) of this section and who is actively engaged in, or going to or from, a recreational, sport, including, but not limited to, competitive shooting, or hunting activity which may require the use of a firearm is guilty of a misdemeanor. As used in this subdivision, "going to or from" includes a reasonable diversion from the direct route of travel.~~

~~(c) A violation of this section which is punished by imprisonment in a county jail not exceeding one year shall not constitute a conviction of a crime punishable by imprisonment for a term exceeding one year for the purposes of determining federal firearms eligibility under Section 922(g)(1) of Title 18 of the United States Code.~~

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition

of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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